

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)
)
)
v.)
)
GONS GUTIERREZ NACHMAN,) No.: 1:08CR62 (GBL)
)
)
Defendant.)

GOVERNMENT'S OPPOSITION TO LATE CONTINUANCE

COMES NOW the United States of America by its United States Attorney for the Eastern District of Virginia, Chuck Rosenberg, and Assistant United States Attorney Ronald L. Walutes, Jr., and respectfully files the government's opposition to defendant's late motion for a continuance.

1. The defendant, Gons Gutierrez Nachman, pled guilty to Misuse of a Diplomatic Passport and Possession of Child Pornography before this Court on April 17, 2008. Sentencing was set for July 11, 2008. At the time of the plea, counsel were provided with this Court's Policy Regarding Procedures to be Followed in Sentencing. This policy requires a written brief be filed seven days in advance of sentencing by the parties. The defendant has not filed his brief.

2. The defendant filed a Notice and Motion to Continue Sentencing late in the day on July 3, 2008. The motion makes an oblique reference to 18 U.S.C. §3553(a) and the *Booker* line of cases apparently to suggest the presentence report prepared in this case was in some respect deficient. It is not. It is thorough, detailed, and transparent in its application of the United States Sentencing Guidelines. It included considerable detail as to both the nature and circumstances of the offenses and history and characteristics of the defendant. The defendant's two paragraph

objection, dated June 23, 2008, identifies his objection to (1) the failure to grant a “2-point departure for acceptance of responsibility,” (2) the upward adjustment for abuse of position of trust” and (3) application of the Sentencing Guideline’s cross reference to producing child pornography. The defendant made no objection or suggested amendment to the presentence report author related to §3553(a).

3. This letter, copied to the government, advises the defendant anticipated requesting “a brief continuance” to enable Dr. Samenow to complete an evaluation of the defendant. Although promising to remain in contact, no further communication was received until last week when the defendant asked the government of its position as to a continuance until August 15, 2008. By email the defendant advised that his expert would not complete interviewing the defendant until the end of July.

4. It is not clear that Dr. Samenow has even begun to interview the defendant in this case. The purpose of the evaluation is similarly unclear. The defendant reports no history of mental problems with the possible exception of depression in the past. The defendant, and his counsel, devoted considerable effort seeking to marry a foreign national without advising this Court of any concern as to the defendant’s mental health. It is unknown to the government whether the defendant had retained a mental health expert when he sought to involve this Court in his marriage efforts. At the time of his plea the defendant did not alert this Court to any medical concerns.

5. Incredibly, the defendant asserts that his is an unusual case because he was born and raised abroad and the victims are children of foreign countries. This argument does not need an expert to resolve. This is not an isolated incident nor does it involve a single foreign country. While under investigation for inappropriate conduct abroad, the defendant committed the other

offense for which he is before this Court when he reentered the country from which he had been removed. There is much before this Court to inform the decision whether this defendant is at risk to repeat his criminal behavior.

Wherefore the government asks this Court to require the defendant to provide additional detail as to his need for an evaluation and the dates when he sought to accomplish this evaluation in preparation for his July 11, 2008 sentencing.

Respectfully submitted,

Chuck Rosenberg
United States Attorney

By: _____ /s/

Ronald L. Walutes, Jr.
Virginia Bar No.: 26312
Attorney for the United States of America
United States Attorney's Office
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700
Fax: 703-739-9556
Email: ron.walutes@usdoj.gov

CERTIFICATE OF SERVICE

I electronically filed the foregoing Government's Opposition to Continuance with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) on July 7, 2008, to the following:

Lorilee Gates, Esquire
Stephen J. Stine, Esquire
Counsel for the defendant

By: _____ /s/
Ronald L. Walutes, Jr.
Virginia Bar No.: 26312
Attorney for the United States of America
United States Attorney's Office
Justin W. Williams United States Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700
Fax: 703-739-9556
Email: ron.walutes@usdoj.gov